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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------|
| 10/514,431 | 11/16/2004 | Hirotaka Tohara | 2004 1723A | 1050 |
| 513 | 7590 | 01/18/2006 | EXAMINER | |
| WENDEROTH, LIND & PONACK, L.L.P. 2033 K STREET N. W. SUITE 800 WASHINGTON, DC 20006-1021 | | | DOSTER GREENE, DINNATIA JO | |
| | | ART UNIT | PAPER NUMBER | |
| | | 3743 | | |

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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| | | |
|------------------------------|------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/514,431 | TOHARA, HIROTAKA |
| | Examiner | Art Unit |
| | Dinnatia Doster-Greene | 3743 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 July 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 14-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 14,15,18-20 and 23 is/are rejected.
- 7) Claim(s) 16,17,21 and 22 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input checked="" type="checkbox"/> Other: <u>Detail Action</u> . |

DETAILED ACTION***Response to Amendment***

The amendment filed on July 28, 2005 has been entered. Examiner acknowledges that **claims 1-13** have been cancelled and **claims 14-23** have been added.

Response to Arguments

Applicant's arguments with respect to claims 14-15, 18-20 and 23 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 14-15; 18-20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uematsu (Japanese Utility Application No. 125767/1984) in view of Wilson (U.S. Patent No. 2,237,954) and Un (U.S. Patent No. 1,322,375).

Uematsu discloses a nose mask (Figs. 1-3) characterized in that an arrangement axle (1) is inserted from nares into a nasal vestibule, a plurality of mask portions (2) are selectively fitted on a tip of the arrangement axle, and one mask portion is fitted by being selected from the group of a mask portion for a water performance, a mask portion for filtering pollen, dust, and malodor, and a mask portion for medical treatment of a nose (pages 1-4). Uematsu discloses wherein the mask portions are configured to have an axle to arrange a cellulose sponge (2) and filters (3) alternately.

In view of the cited prior art, the Office takes the position that Applicant's invention is a mere reversal of parts. For instance, the present invention recites a nose mask comprising a pair of round-shaped filters arranged on opposite sides of a cellulose sponge. In comparison, Uematsu discloses a pair of round-shaped sponges arranged on opposite sides of a filter. *In re Gazda*, 219 F.2d 449, 104 USPQ 400 (CCPA 1955), the court held that the mere reversal of part is an obvious expedient. Furthermore, Wilson teaches in column 1, lines 35-36 that the sponge and filter may be interchangeable. In addition, Un, which also relates to a nose mask, teaches that it is known to include a cap (4) and a stopper (6) in a nose mask. Therefore, it would be obvious at the time of the invention to rearrange the filters and the sponge of the nose mask of Uematsu for the purpose of applying a sufficient pressure to retain the nose mask as taught by

Wilson (column 1, lines 25-40) and to incorporate the cap and stopper as suggested by Un for the purpose of retaining the sponge and filter upon an axle arrangement (Un, column, 2, lines 67-70).

Allowable Subject Matter

Claims 16-17 and 21-22 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

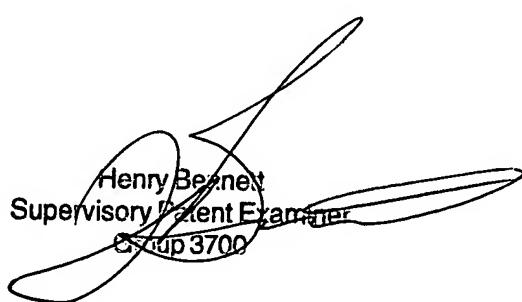
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinnatia Doster-Greene whose telephone number is 571-272-7143. The examiner can normally be reached on 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-271-7143.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ddg



Henry Bennett
Supervisory Patent Examiner
Group 3700